

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

JOSEPH WORTHINGTON,	:	
Plaintiff,	:	
	:	
v.	:	CA 06-79 M
	:	
JO ANNE B. BARNHART,	:	
COMMISSIONER,	:	
SOCIAL SECURITY ADMINISTRATION,	:	
Defendant.	:	

**MEMORANDUM AND ORDER**

This matter is before the Court on the request of Plaintiff Joseph Worthington ("Plaintiff") for judicial review of the decision of the Commissioner of Social Security ("the Commissioner"), denying Supplemental Security Income ("SSI"), under §§ 205(g) and 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C. §§ 405(g) and 1383(c)(3) ("the Act"). Defendant Jo Anne B. Barnhart ("Defendant") has filed a motion under sentence four of 42 U.S.C. § 405(g) for remand of the matter to the Commissioner.

With the consent of the parties, the case has been referred to a magistrate judge for all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. I find that remand to the Commissioner is appropriate. Accordingly, I order that Defendant's Assented-to Motion for Voluntary Remand under Sentence Four of 42 U.S.C. § 405(g) (Document ("Doc.") #9) ("Motion for Remand") be granted.

**Facts and Travel**

Plaintiff filed an application for SSI on January 28, 2003, alleging disability since November 30, 1999. Motion for Remand at 1; see also Plaintiff's Memorandum in Support of His Motion for Summary Judgment ("Plaintiff's Mem.") at 2. The application was denied initially and on reconsideration, and Plaintiff timely

requested a hearing before an administrative law judge ("ALJ"). Plaintiff's Mem. at 2. A hearing was conducted on March 30, 2005, at which Plaintiff, his attorney, a medical expert, and a vocational expert appeared. Id. On May 20, 2005, the ALJ issued a decision in which she found Plaintiff not disabled and, therefore, not entitled to SSI.<sup>1</sup> See Motion for Remand at 1; Plaintiff's Mem. at 2. Plaintiff's request for review by the Appeals Council was denied on December 16, 2005, and the instant judicial appeal followed. See Plaintiff's Mem. at 2.

Plaintiff filed a Complaint (Doc. #1) in this Court on February 17, 2006. Defendant on April 27, 2006, filed her Answer (Doc. #5). Pursuant to the consent of the parties, the case was subsequently referred to this Magistrate Judge. See Order of Reference dated May 5, 2006 (Doc. #6). Plaintiff's Motion for Summary Judgment (Doc. #8) was filed on July 10, 2006. On August 10, 2006, Defendant filed her Motion for Remand (Doc. #9).

### **Discussion**

Section 405 of Title 42 of the United States Code ("U.S.C.") provides, in relevant part, that: "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the

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<sup>1</sup> The Social Security regulations prescribe a five-step inquiry for use in determining whether a claimant is disabled. See 20 C.F.R. § 416.920(a) (2005); see also Bowen v. Yuckert, 482 U.S. 137, 140-42, 107 S.Ct. 2287, 2291 (1987); Seavey v. Barnhart, 276 F.3d 1, 5 (1<sup>st</sup> Cir. 2001). Pursuant to that scheme, the Commissioner must determine sequentially: (1) whether the claimant is presently engaged in substantial gainful work activity; (2) whether he has a severe impairment; (3) whether his impairment meets or equals one of the Commissioner's listed impairments; (4) whether the claimant is able to perform his past relevant work; and (5) whether the claimant remains capable of performing any work within the economy. See 20 C.F.R. § 416.920(b)-(f). The evaluation may be terminated at any step. See Seavey v. Barnhart, 276 F.3d at 4. The ALJ here found that Plaintiff was not disabled because he was able to return to his past relevant work as a car washer. See Motion for Remand at 1 (citing Record ("R.") at 18-23).

Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g) (2006). Defendant states that in assessing Plaintiff’s residual functional capacity (“RFC”), the ALJ did not consider the opinion of Dr. Ivan Wolfson, one of Plaintiff’s treating physicians, as to Plaintiff’s functional limitations or explain the weight given to that opinion as required. See Motion for Remand at 2. Similarly, the ALJ failed to consider or assign weight to the opinion of a state Disability Determination Services consultant physician, Dr. Youssef Georgy, regarding Plaintiff’s RFC. See id. Moreover, in negatively assessing Plaintiff’s credibility, the ALJ failed to consider fatigue as a side effect of Plaintiff’s medications. See id. at 2-3. Finally, according to Defendant, the basis for the ALJ’s RFC finding for a limited range of light work is unclear and that finding appears to be unsupported by substantial evidence. See id. at 3. Defendant therefore requests that the instant matter be remanded for further administrative proceedings, see id., and represents that Plaintiff’s counsel has consented to remand of the case, see id. at 4.

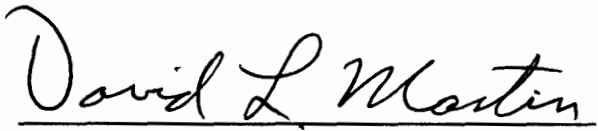
The Court agrees that remand is warranted. Accordingly, I order that the matter be remanded to the Commissioner for further administrative proceedings. On remand, the Commissioner is directed to instruct the ALJ to: (1) update Plaintiff’s medical records and conduct another administrative hearing; (2) obtain supplemental vocational expert and/or medical expert testimony if needed; (3) evaluate all medical record opinions as provided by 20 C.F.R. § 416.927; (4) assess Plaintiff’s credibility in accordance with Social Security Ruling 96-7p; and (5) issue a new decision based on the total record, with specific citations to the evidence supporting her assessment of Plaintiff’s RFC. See Motion for Remand at 4.

### Conclusion

Defendant's Motion for Remand is hereby granted. I order that judgment be entered for Plaintiff, that the Commissioner's decision be reversed, and that the matter be remanded to the Commissioner for further administrative proceedings consistent with this Memorandum and Order.

So ordered.

ENTER:

  
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DAVID L. MARTIN  
United States Magistrate Judge  
August 23, 2006

BY ORDER:

  
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Deputy Clerk